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OFFICE OF PETITIONS

In re Application of :
Keller, et al. :
Application No.: 09/118,359 : **ON PETITION**
Filing Date: July 17, 1998 :
Attorney Docket No. MI22-5897 :

This is a decision on the "Petition for Filing by Assignee" filed June 30, 2006. The petition will be treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.67.

The petition is **dismissed**.

Petitioner requests that requirement for the supplemental declaration as made by the examiner be withdrawn on the basis that the assignee has been unable to locate the inventors to sign a new declaration. It is noted, that in this case, 37 CFR 1.67 requires that the supplemental declaration be signed by all named inventors, yet petitioner has demonstrated that the inventors cannot be located. In such a case, Section 603 of the *Manual of Patent Examining Procedure* (MPEP) provides that:

When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. See MPEP § 409.03(a). If there are no joint inventor(s), then the party with sufficient proprietary interest must sign the supplemental declaration on behalf of the nonsigning inventor. See MPEP § 409.03(b).

Accordingly, the instant petition will be treated as petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.67 so as to accept a supplemental declaration without the signature of the inventors. There is no need to withdraw the requirement for a new declaration as made by the examiner. The petition cannot be granted, however, because petitioner failed to file a declaration executed by the assignee on behalf of the unavailable inventors. The renewed petition must be accompanied by a supplemental declaration executed by an authorized representative of the assignee on behalf of the nonsigning inventors.

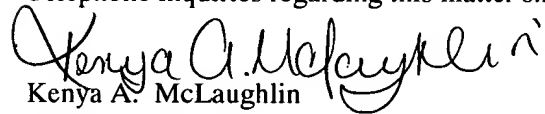
The fee for a petition under 37 CFR 1.183 is \$400.00. The renewed petition must be accompanied by an additional \$200.00, which will be added to the amount of \$200.00 previously remitted on June 30, 2006.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this matter should be directed to the undersigned at (571) 272-3222.


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